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LEGISLATIVE SUMMARY

Bill C-64:
An Act respecting wrecks, abandoned, dilapidated or hazardous vessels and salvage operations

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Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

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Legislative Summary of Bill C-64
(Legislative Summary)

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LEGISLATIVE SUMMARY OF BILL C-64: AN ACT RESPECTING WRECKS, ABANDONED, DILAPIDATED OR HAZARDOUS VESSELS AND SALVAGE OPERATIONS

1 BACKGROUND

1.1 OVERVIEW

Bill C-64, An Act respecting wrecks, abandoned, dilapidated or hazardous vessels and salvage operations (short title: Wrecked, Abandoned or Hazardous Vessels Act), was introduced in the House of Commons on 30 October 2017 by the Honourable Marc Garneau, Minister of Transport. The bill was referred to the House of Commons Standing Committee on Transport, Infrastructure and Communities on 5 December 2017, which reported back to the House of Commons with amendments on 2 March 2018.[1]

In recent years, the presence of abandoned vessels has become an issue of growing concern, both in Canada and in other coastal jurisdictions.[2] Abandoned, dilapidated and wrecked vessels mar the landscape and potentially threaten navigation, the marine environment and the well-being of coastal communities. Moreover, the costs of removing and disposing of problem vessels are often borne by the Canadian taxpayer.

Bill C-64 seeks to ensure that commercial vessels and pleasure craft that become wrecks – or are otherwise abandoned, dilapidated or hazardous – are removed or remediated at their owners' expense. The bill further seeks to ensure that owners have the financial resources to meet these obligations.[3]

Hazards arising from shipwrecks are currently addressed by at least eight federal statutes,[4] including the *Canada Shipping Act, 2001* (CSA 2001)[5] and the *Navigation Protection Act* (NPA).[6] In broad terms, the NPA imposes certain obligations on shipowners in the event that a wreck creates an obstruction to navigation, while the CSA 2001 empowers the Minister of Fisheries and Oceans to take mitigation measures to prevent a wreck from causing pollution.

The protection afforded by the current legislative framework is widely considered to be inadequate, in part because it does not expressly hold shipowners liable for the remediation of hazards unrelated to obstructions to navigation or immediate pollution threats.[7] This inability to channel liability towards the shipowner in a wider range of circumstances means that the public purse often assumes the cost of wreck removal.

For example, the provincial government of Nova Scotia paid in excess of $12 million to remove the foreign-owned *MV Miner* which ran aground in a provincially protected wilderness area in September 2011. As the vessel posed no threat of pollution and no risk to navigation, nothing in existing federal legislation allowed the owners of the *MV Miner* to be held to account for the removal of the wreck.[8]

Bill C-64 is designed to address this and other gaps in existing federal law. Among other measures, it strengthens vessel owner responsibility and enhances the Government of Canada's power to take timely action. It also makes abandoning a vessel illegal and establishes an administration and enforcement scheme.[9]

The bill constitutes one element of the national strategy to address Canada's wrecked and abandoned vessels that forms part of Canada's Oceans Protection Plan. Other proposals set out in the strategy include improving vessel owner identification and considering options for long-term funding for the removal of wrecked and abandoned vessels through vessel owner–financed funds.[10]

1.2 *Nairobi International Convention on the Removal of Wrecks, 2007*

Canada cannot fully address the problem of abandoned vessels and wrecks alone: shipping is a global industry and global solutions are required. To this end, Bill C-64 implements the *Nairobi International Convention on the Removal of Wrecks, 2007*,[11] known variously as the Nairobi Convention, the International Wreck Removal Convention or the Wreck Removal Convention (henceforth the Convention). The text of the Convention is set out in Schedule 1 of the bill.

The Convention, which was adopted on 18 May 2007 and which entered into force on 14 April 2015, constitutes the "first set of uniform international rules aimed at ensuring the prompt and effective removal of wrecks located beyond the territorial sea."[12] It applies to a State Party's Exclusive Economic Zone (EEZ), an area defined by the *United Nations Convention on the Law of the Sea* (UNCLOS) as extending not more than 200 nautical miles from the baseline from which the breadth of the territorial sea is measured.[13] In turn, "territorial sea" is defined as the area up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with UNCLOS.[14]

As of November 2017, the Convention had been ratified by 41 states, which together account for 72% of world merchant shipping tonnage.[15]

Beyond its overarching objective of harmonization, the Convention's three primary goals are as follows:

- to establish shipowner liability for the costs of wreck removal;
- to ensure enforceability; and
- to provide clarity as to the rights of states regarding wrecks located outside their territorial sea, but within their EEZ.

Canada can accede to the Convention once its provisions have been implemented in Canadian law. The Convention will come into force in Canada 90 days following the date on which Canada deposits its instrument of accession with the International Maritime Organization (IMO).[16]

1.2.1 Establishing Shipowner Liability and Ensuring Enforceability

Article 10(1) of the Convention makes the registered owner of the ship liable for the costs incurred for locating, marking and removing the wreck. This provision of the Convention imposes a standard of strict liability insofar as the owner is presumed to be liable unless certain defences apply. The registered owner is exonerated if the maritime casualty[17] that caused the wreck

- resulted from an act of war, hostilities, civil war, insurrection, or a natural phenomenon of an exceptional, inevitable and irresistible character;
- was wholly caused by an act or omission done with intent to cause damage by a third party; or
- was wholly caused by the negligence or other wrongful act of any Government or other authority responsible for the maintenance of lights or other navigational aids in the exercise of that function.

Further, Article 10(2) of the Convention affirms the registered owner's right to limit liability under any national or international regime. While this provision has attracted criticism,[18] it should be noted that, despite the phrasing in the Convention, many states do not allow limitation of liability for wreck removal.[19]

For example, Part 3 of Canada's *Marine Liability Act*[20] excludes claims for measures to remove or remediate shipwrecks from the shipowner's right to limit their liability under that Part. This exclusion will be unaffected by the incorporation of the Convention into Canadian law.[21]

While the Convention places the onus to remove the wreck on the registered owner, it also provides Affected States with options where the registered owner does not cooperate or cannot be contacted.[22] In such circumstances, the Convention provides Affected States with the authority to remove wrecks, although *only* those wrecks that constitute a hazard (Article 9).

That said, the definition of "hazard" contained in the Convention is very broad and goes "well beyond the immediate threat to navigation or to the marine environment" to include damage to the coastline or "related interests."[23] "Related interests" are defined to include tourist attractions, economic interests and the well-being of the area concerned.

Recognizing that a judgment against a shipowner is likely to be valueless if the shipowner is bankrupt or in otherwise straitened financial circumstances, the Convention also establishes a means to help states recover at least some of the costs incurred in removing wrecks.[24] The first of these measures is a compulsory insurance requirement. Article 12(1) of the Convention stipulates that the registered owner of a ship of 300 gross tonnage[25] and above and flying the flag of a State Party must be required to have insurance or other financial security in place to cover liability under the Convention, while Article 12(11) requires States Parties to prohibit any ship entitled to fly their flag from operating *at any time* unless a certificate of insurance has been issued.

In keeping with principles of international law,[26] the compulsory insurance requirement applies only to ships flying the flag of a State Party. This potentially weakens the protection afforded by the Convention. However, this situation is partially mitigated by Article 12(12), which requires each State Party to ensure, under its national law, that insurance or other security is in force in respect of any ship of 300 gross tonnage and above, *wherever registered*, entering or leaving a port in its territory. As states have full sovereignty in respect of their ports, this requirement does not encroach upon the rights of states not party to the Convention.[27]

As a general rule, the duty of the insurer under maritime law does not arise until the assured has paid damages to the third party. This is commonly referred to as the "pay to be paid" rule.[28] However, the Convention disregards this rule and introduces a second measure to enable states to recover costs incurred in removing wrecks: a right of direct action against the insurer. This measure is a key feature of the Convention and is considered particularly important in helping claimants overcome the problems of pursuing a claim against a company in another jurisdiction.[29]

1.2.2 Rights of States Within Their Exclusive Economic Zone

Although the Convention applies to a State Party's EEZ (the Convention area), it is not applicable on the high seas or in a State Party's territorial sea or internal waters. As a consequence, incidents that occur close to shore are not covered by the Convention. This is considered problematic as "most wreckage occurs close to shore either in the territorial sea or in internal waters."[30]

In order to address this issue, an opt-in provision was developed to allow states to extend the application of the Convention to their territorial sea and internal waters. The opt-in provision – submitted at the International Conference on the Removal of Wrecks in 2007 by Australia, Canada, Germany, Norway, Portugal and the United Kingdom – was designed to give States Parties the benefit of the financial provisions of the Convention (compulsory insurance and direct action against the insurer), which would not be possible through unilateral action.[31] As of October 2015, 13 states had chosen to use the opt-in clause.[32]

The Convention has been the subject of extensive commentary. Academics and other observers have commended the attempt to provide uniform regulation for wrecks, and appear to broadly support measures empowering Affected States to act when shipowners cannot or will not.[33] In addition, certain commentators have noted that the compulsory insurance requirement may "constitute an inducement to a coastal state … [that is] … in a quandary as to whether to allow a place of refuge to a ship in distress."[34] Nevertheless, concern has been expressed about the Convention's limitation of liability provisions and its scope of geographical application.[35]

2 DESCRIPTION AND ANALYSIS

Bill C-64 contains 154 clauses. This Legislative Summary highlights selected aspects of the bill; it does not review every clause.

2.1 Interpretation (Clause 2)

Two ministers are responsible for the Act. Clause 2 of the bill provides that the "Minister" within the meaning of the bill is the Minister of Transport. This definition is subject to an exception, set out in clause 89, which defines "Minister" as the Minister of Fisheries and Oceans in relation to certain violations discussed below.

Clause 2 also provides definitions of a number of terms, among them the term "vessel." The definition applies throughout the bill, except in Part 1. It includes any boat, ship, or craft capable of being used "in, on, through or immediately above water." It also includes a floating object that is designated to be a vessel by the regulations.

The definitions in clause 2 apply to the entire Act, unless otherwise specified. Supplemental definitions in Parts 1, 2, 3 and 4 apply only to those Parts.

2.2 Purpose, Application and Exclusions (Clauses 3, 4, 5 and 11)

Clause 4 describes the purpose of the bill thus:

> to promote the protection of the public, of the environment, including coastlines and shorelines, and of infrastructure by, among other things, regulating wrecks and vessels posing hazards, prohibiting vessel abandonment, and recognizing the responsibility and liability of owners for their vessels.

Clause 3 makes the bill binding on the provinces and the federal government, subject to certain exceptions. Clause 5 of the bill addresses the application of the bill in terms of exclusions. Consistent with other federal marine legislation, clause 5(1) of the bill does not apply to vessels or aircraft that belong to the Canadian Forces or a foreign military force, or any other vessel or aircraft under the control of the Canadian Forces, subject to one narrow exception.[36] In addition, clause 5(2) provides that, other than Parts 3 and 4 (Salvage and Receiver of Wreck, respectively), the bill does not apply to the following:

- a vessel that is owned and operated by the federal government, the provinces or a foreign state while that vessel is being used exclusively for non-commercial governmental purposes; and
- a vessel that is engaged in the exploration, exploitation or production of mineral resources.

Moreover, under section 5(3), the bill, other than Parts 3 and 4 and section 131, does not apply to the case of wrecks that have been recognized as having heritage value under an Act of Parliament or the legislature of a province.

Finally, clause 11 provides that, subject to any conditions that the Minister of Transport considers appropriate, he or she may exclude a vessel or wreck from the application of all or part of the Act, if he or she is of the opinion that it would be in the public interest to do so.

Provisions in Parts 1, 2 and 3 detail the specific application of those Parts.

2.3 PART 1: REMOVAL OF WRECKS[37] (CLAUSES 15 TO 26)

2.3.1 INTERPRETATION AND APPLICATION (CLAUSES 15 TO 18)

Part 1 of the bill gives effect to the Convention under Canadian law. International treaties, even those that have been signed and ratified by Canada and therefore bind it internationally, have no formal or direct legal effect of their own within the Canadian legal system.[38] To have such effect, they must generally be transformed or implemented through domestic law.[39] Bill C-64 is the mechanism by which the Convention is incorporated into Canadian law.

Part 1 of the bill also provides the public purse with some additional protection against the cost of shipwrecks, beyond what is included in the Convention. For example, whereas the Convention applies to ships – defined as seagoing vessels of any type – clause 15 extends the application of the Canadian legislation to non-seagoing vessels, such as the Great Lakes fleet. Similarly, clause 26 provides provisions addressing the removal of towed objects, a question not covered by the Convention.[40]

Pursuant to clause 18, Part 1 of the bill applies to the following:

- vessels in Canadian waters or in Canada's EEZ;
- Canadian vessels, wherever they are; and
- wrecks that are located in the Convention area of a State Party to the Convention and that are the result of a maritime casualty.

Clause 15(2) provides that the words and expressions contained in Part 1 of the bill have the same meaning as in the Convention, unless otherwise indicated. Further, the bill affirms that, in the event of any inconsistency between Part 1 of the bill and the Convention, Part 1 prevails to the extent of the inconsistency (clause 17).

2.3.2 Hazards[41] (Clauses 19 to 22)

As discussed above, the Convention seeks to establish uniform rules to address wreck removal and remediation. It introduces reporting requirements for all wrecks resulting from maritime casualties and establishes requirements relating to locating, marking and removing hazardous wrecks. The process to be followed in meeting these requirements is primarily addressed in clauses 19 to 22 of Bill C-64.

2.3.2.1 Reporting Requirements

Certain wreck reporting requirements contained in Article 5 of the Convention are incorporated into Canadian law by clause 16 of the bill; others are incorporated through clause 19. Clause 19 requires the master and operator of a vessel involved in a maritime casualty that resulted in a wreck to report the event to a marine communications and traffic services officer designated under the CSA 2001, unless another person has been designated by the Minister of Fisheries and Oceans (clause 19(1)). If the vessel is located in the area of a State Party to the Convention other than Canada, the report must be made to the government of that state (clause 19(2)).

2.3.2.2 Marking a Wreck

As well as informing mariners and other states of the existence of a wreck, the Convention requires that states mark hazardous wrecks according to "the internationally accepted system of buoyage in use in the area the wreck is located" (Article 8). Marking a wreck warns other vessels and facilitates the locating of the wreck for remediation purposes.[42] Clause 20 of the bill incorporates this requirement.

2.3.2.3 Removing a Wreck

One of the principal objectives of the Convention is to empower States Parties to take measures to facilitate the removal or remediation of hazardous wrecks (Article 9).[43] To this end, clause 21(1) of the bill enables the Minister of Fisheries and Oceans to direct the owner of a vessel to take all measures practicable to establish the precise location of the wreck, and all measures proportionate to the hazard to mark or remove the wreck. If the vessel owner does not take the required measures within the specified time, the Minister of Fisheries and Oceans can carry them out in his or her stead (clause 21(2)). Finally, if the owner of the vessel cannot be contacted, or if immediate action is required, the Minister of Fisheries and Oceans may take the necessary measures in place of the vessel owner (clauses 21(3) and 22, respectively).

2.3.3 Liability (Clauses 16 and 23)

Clause 16 of the bill gives the Convention liability provision (Article 10) force of law in Canada. As drafted, Article 10 appears to encompass only the costs that the Affected State has incurred, and not those incurred by other actors.[44] However,

liability is further addressed in clause 23(a) of the bill, which provides that subject to any limit set out in the *Marine Liability Act*, the liability of the owner of a vessel for the purposes of Article 10 also includes the costs and expenses incurred by any person in Canada or any person in a state, other than Canada, that is a party to the Convention.

In turn, clause 23(b) holds the vessel owner liable for any loss or damages caused by measures taken in accordance with the Act.

2.3.4 Insurance or Other Financial Security (Clauses 24 to 26)

2.3.4.1 Compulsory Insurance

Clause 24(1)(a) of the bill gives effect to the Convention Article 12(12) requirement that each State Party ensure that insurance or other financial security be maintained in respect of any ship of 300 gross tonnage and above – wherever registered – entering or leaving a port in its territory.[45] Clause 24(1)(b) further provides that a Canadian vessel of that category cannot operate anywhere if it does not have insurance or other security.

Subject to certain exceptions, certificates attesting that insurance coverage is in force are required to be carried on board and produced for inspection at the request of an enforcement officer or the Minister of Fisheries and Oceans (clause 24(2)). Only certain authorities can issue a certificate for the purposes of the Act (clause 25(1)):

- If the vessel is Canadian, the certificate must be issued by the Minister of Transport.
- If the vessel is registered in a State Party to the Convention other than Canada, the certificate must be issued by or under the authority of that state.
- If the vessel is registered in a state that is not a party to the Convention, the certificate must be issued by the Minister of Transport or by or under the authority of the government of a country that is a State Party to the Convention.

Pursuant to clause 25(2), the Minister of Transport may designate persons to issue, refuse or revoke a certificate on his or her behalf.

The Minister of Transport may refuse a certificate if he or she is of the opinion that the insurer or guarantor will be unable to meet their obligations under the contract of insurance or if the financial security provided will not satisfy the requirements of Article 12 of the Convention (clause 25(4)). Similarly, the Minister may revoke the certificate if he or she is of the opinion that the insurer or guarantor is not able to satisfy the Convention requirements (clause 25(5)).

2.3.4.2 Towed Vessels

A towed vessel is often "much larger than the towing vessel and more likely to become a wreck, particularly if it has no motive power of its own."[46] Yet, while the Convention holds the owner of a towing vessel liable for the costs of locating,

marking and removing the wreck of the towing vessel itself, it does not hold the owner of the towing vessel liable for the wreck of the vessel being towed.[47] If the towed vessel were registered and compliant with all provisions of the Convention, this would not be problematic: the owner of the towed vessel could be held liable for the costs incurred. However, if the towed vessel were not registered, holding the owner liable could prove difficult.

Clause 26 of the bill addresses this difficulty by empowering the Minister of Transport to exempt a vessel that is not registered from the clause 24 compulsory insurance requirements for the period during which it is being towed, provided he or she is satisfied that a contract of insurance or other financial security is in force with respect to the vessel that is being towed. While the owner of the towed vessel remains liable for wreck removal costs, this measure places the onus on the owner of the towing vessel to ensure, prior to the engaging in the tow operation, that the owner of the towed vessel maintains adequate insurance for wreck removal or remediation.[48] Failure by the owner of the towing vessel to produce proof of the exemption is an offence (clause 110(1)(a)).

2.4 Part 2: Vessels and Wrecks[49] of Concern (Clauses 27 to 47)

Part 2 of the bill complements Part 1, setting out rules designed to prevent vessels from becoming wrecks and authorizing the Minister of Transport and the Minister of Fisheries and Oceans to take certain measures when the vessel owner is non-compliant, unknown or cannot be found.

Part 2 applies, unless otherwise provided, in respect of

- wrecks and Canadian vessels in Canadian waters and in Canada's EEZ; and
- all other vessels in Canadian waters.

Consistent with the approach adopted in Part 1, Part 2 makes vessel owners liable for the costs and expenses incurred in relation to addressing abandoned or dilapidated vessels[50] (clause 45).

Part 2 does not apply in respect of vessels that are less than 5.5 m in length and designed to be primarily human powered or wind powered (clause 29). In the view of Transport Canada, these vessels are "unlikely to pose a significant shipwreck hazard."[51]

2.4.1 Prohibitions and Corrective Measures (Clauses 30 to 43)

While some wrecks are the result of a maritime casualty, others occur when vessels are deliberately dumped at sea. Bill C-64 seeks, among other objectives, to ensure that abandoning a vessel no longer constitutes a "low-cost, low-risk option" for ship owners seeking to dispose of unwanted vessels.[52] To this end, the bill prohibits a number of practices that are of concern; namely,

- leaving a dilapidated vessel stranded, grounded, anchored or moored in the same location for a period of 60 consecutive days, unless express consent has been provided by the owner, manager or lessee of the location where the vessel is left (clause 30);
- leaving a vessel adrift for a period of 48 hours without taking measures to secure it (clause 31);
- abandoning a vessel, unless in accordance with prescribed exceptions, such as the need to avert a danger to human life (clause 32);
- letting a vessel become a wreck by reason of failing to maintain it (clause 33); and
- knowingly causing a vessel to sink or partially sink or be stranded or grounded, unless in accordance with prescribed exceptions, including the need to avert a danger to human life (clause 34).

Moreover, the bill grants the Minister of Transport and the Minister of Fisheries and Oceans powers to undertake corrective measures when these statutory prohibitions are contravened.

The Minister of Transport's powers include the following:

- to take any measures he or she considers necessary in regard to a dilapidated vessel that has been left stranded or anchored in the same location for a period of more than 60 days. These measures can include repairing, moving, dismantling or destroying the vessel or its contents (clause 30(3)(a));
- to sell, destroy or otherwise dispose of a vessel that is abandoned (clause 35);
- to direct the authorized representative (or owner) of a dilapidated vessel to repair, secure, move, remove, dismantle or destroy a dilapidated vessel or its contents in accordance with the Minister's direction if the vessel is located in a *public port* or *public port facility* or any property belonging to the Crown, other than a scheduled harbour[53] or property under the responsibility of the Minister of Fisheries and Oceans (clause 37(2)); and
- to authorize any person to take possession of all or part of a vessel that is wrecked, sunk, stranded or abandoned in Canadian waters for the benefit of that person or the public (clause 38(1)).

In turn, the Minister of Fisheries and Oceans has the following powers, among others:

- to take measures to prevent, mitigate or eliminate a *hazard* posed by a vessel or a wreck, including repairing, securing, moving or removing the vessel, wreck or their contents (clause 36(a)); and
- to direct the authorized representative of a dilapidated vessel to repair, secure, move, remove, dismantle or destroy a dilapidated vessel or its contents in accordance with the Minister's direction if the vessel is located in a *scheduled harbour* or any Crown property for which the Minister of Fisheries and Oceans is responsible (clause 37(1)).

While the bill authorizes the Minister of Transport and the Minister of Fisheries and Oceans to dispose of vessels in some circumstances, clause 39 provides that a 30-day notice must first be provided to various parties, including the public and the owner. The notice requirement does not apply if either minister believes that the vessel or wreck is likely to deteriorate rapidly. Similarly, clause 39 provides that the Minister of Fisheries and Oceans may dispose of a vessel in a period of less than 30 days if it is seeking to mitigate a hazard pursuant to clause 36.

The bill establishes that any risk, cost and expense associated with the disposition of the vessel, wreck or its contents falls on the owner (clause 40). That said, in some instances, the disposition of a vessel and its contents may generate a surplus. Clause 41 sets out the rules governing the payment of proceeds after deducting the costs and expenses incurred in respect of the disposition.

2.4.2 Compensation and Liability (Clause 45)

Clause 45 establishes that the owner of a vessel or wreck is liable for the costs and expenses incurred by the Minister of Transport, the Minister of Fisheries and Oceans or any other person not otherwise compensated by the federal government under Part 2. However, any action in respect of liability must be initiated within six years of the day in which the first measure was taken in respect of the vessel or wreck (clause 45(2)).

2.5 Part 3: Salvage (Clauses 48 to 55)

Maritime salvage involves "the saving of life and property from the dangers of the sea."[54] Under the principles of maritime salvage law, a volunteer who successfully saves maritime property in danger gains the right of reward from the owner. In practice, most maritime salvage is now arranged by salvage contract.[55]

Canada has accepted all of the basic principles of maritime salvage law that have been established through the common law and other usage, as well as those that have been codified by the *International Convention on Salvage, 1989*[56] (Salvage Convention). Although the Salvage Convention did not enter into force until 1996, it was approved and declared to have force of law in Canada in 1989. Today, it is part of Canadian maritime law through the CSA 2001.

Bill C-64 removes the provisions relating to the Salvage Convention from the CSA 2001 and re-enacts them in the bill, subject to certain minor revisions to improve clarity. The text of the Salvage Convention is set out in Schedule 2 to the bill.

2.6 Part 4: Receiver of Wreck (Clauses 56 to 66 and 146)

Although their ownership may be in doubt or unknown, even wrecks[57] and other "derelict" maritime property are likely to be owned by someone.[58] In order to prevent

disputes, many jurisdictions, including Canada, appoint a receiver of wreck. The main function of a receiver of wreck is to "take charge of any wreck, preserve and protect it and deal with any salvage or other property claims that may arise."[59] In Canada, the receiver of wreck is usually a senior officer of the Canadian Coast Guard.

The current law in relation to wrecks is set down in Part 7 of the CSA 2001. Clause 146 of the bill repeals Part 7 of the CSA 2001, replacing it with Part 4 of Bill C-64. Part 4 re-enacts certain provisions of the existing law and introduces some revisions.

2.6.1 Finding or Bringing a Wreck Into Canada (Clauses 58 to 62)

Clauses 58 to 62 set out the law relating to finding or bringing a wreck into Canada. As was the case under the CSA 2001, Bill C-64 requires a person to report a wreck whose owner is unknown or cannot be located to a receiver of wreck (clause 58(1)). Clause 58(3) specifies that a person who finds a wreck whose owner is unknown cannot take possession of it unless one of the following conditions applies:

- the wreck is in danger and the possession is necessary to secure or otherwise protect it; or
- that person has been authorized to do so by the receiver of wreck following receipt of that person's report of the wreck.

In addition, clause 61 introduces some changes to the process that must be followed when claiming a wreck. It requires that a person claiming ownership of a wreck submit a claim to the receiver of wreck within 30 days after the day on which notice was given that the wreck was reported. In contrast, under section 158 of the CSA 2001, the claim has to be submitted within 90 days of the wreck having been reported to the receiver of wreck.

2.6.2 Disposition of Wrecks (Clauses 63 to 66)

Bill C-64 also introduces certain changes to the process to be followed when disposing of a wreck. Most notably, clause 63(1) establishes that the receiver of wreck may dispose of a wreck only if 30 days have elapsed after the day on which notice was given that the wreck was reported or that, in the opinion of the receiver, the wreck is likely to deteriorate rapidly. In contrast, section 160(1) of the CSA 2001 establishes a waiting period of 90 days following the date that the wreck was reported and includes a provision allowing the receiver to dispose of a wreck at any time if, in his or her opinion, the value of the wreck is less than $5,000, the storage costs would likely exceed the value of the wreck, or the wreck is perishable or poses a threat to public health or safety.

Moreover, in accordance with clause 63(2) of the bill, the proceeds, if any, of a disposition under clause 63(1) must be held by the receiver of wreck for not less than 30 days after the day on which the disposition occurred. Section 160(2) of the

CSA 2001 prescribes that the proceeds must be held for not less than 90 days after the date that the wreck was reported.

2.7 Part 5: Administration and Enforcement (Clauses 67 to 125)

Part 5 addresses administration and enforcement. It sets out who may enforce the Act, what powers are available to departmental officials and enforcement officers seeking to verify compliance with the Act, and what penalties and other remedies are available in the event of non-compliance.

2.7.1 Shared Authority

Transport Canada and the Department of Fisheries and Oceans, which includes the Canadian Coast Guard, have shared authority over the regulation of navigation on Canada's waterways.[60] Accordingly, Bill C-64 divides enforcement powers between the two departments. The Minister of Fisheries and Oceans is granted powers relating to determining and mitigating hazards while the Minister of Transport is given primary responsibility for most other matters related to shipping and vessel regulation.

Both the Minister of Transport and the Minister of Fisheries and Oceans may designate any person or class of persons as enforcement officers for the purposes of enforcing compliance with the Act (clauses 71 and 72, respectively). Enforcement officers are given extensive powers, which they may apply both in Canadian waters and within Canada's EEZ (clauses 67(5) and 74(5)).

2.7.2 Measures Relating to Hazards (Clauses 67 to 70)

Clause 67(1) grants the Minister of Fisheries and Oceans the authority to enter a place, including a vessel or wreck, when exercising his or her powers referred to in clauses 21, 22 and 36 (related to issuing directions or taking action regarding wrecks) or to determine whether a vessel or wreck poses a hazard. In turn, clause 67(2) accords the Minister of Fisheries and Oceans powers upon entry. These powers include the authority to

- examine the place and anything therein;
- use any computer system or data processing system, or cause it to be used, to examine data contained in or available to it;
- conduct tests or analyses;
- take measurements or samples; and
- remove anything for examination, testing or copying.

The powers mentioned above are subject to some restrictions. For example, anything that is removed by the Minister of Fisheries and Oceans or an enforcement

officer must be returned as soon as is feasible after it is no longer required (clause 69(1)).

Moreover, the bill strives to ensure third-party cooperation by granting additional powers to the Minister of Fisheries and Oceans, including the power under clause 67(3) to direct any person to provide information and to direct any vessel within Canadian waters or Canada's EEZ to stop and to provide any information requested. The Minister of Fisheries and Oceans is also empowered, in the event that a vessel or wreck may pose a grave and imminent danger, to declare an emergency zone around the vessel or wreck and may direct the actions of any persons or vessels within the emergency zone (clause 67(4)).

2.7.3 Compliance Measures and Entry Provisions (Clauses 74 to 86)

Bill C-64 empowers enforcement officers to verify compliance – and prevent non-compliance – with the Act by a variety of means. Notwithstanding certain exceptions, clause 74(1) grants enforcement officers broad powers to enter a place, including a vessel or wreck.

In addition, clause 74(3) authorizes enforcement officers to direct a vessel or a person to provide information for a purpose related to verifying compliance or preventing non-compliance. If an enforcement officer has reasonable grounds to believe that an offence has been committed under the Act, clause 74(4) allows him or her to direct a vessel to stop or proceed according to specified instructions.

In taking action with respect to a vessel or wreck, the Minister of Transport, the Minister of Fisheries and Oceans or an enforcement officer (plus accompanying persons) may enter onto private property and take any measures necessary to identify, locate, mark or remove a vessel or wreck or their contents (clauses 86(1) to 86(5)).

An enforcement officer may order the detention of a vessel, including one that has become a wreck, if he or she has reasonable grounds to believe that an offence has been committed (clause 82). If the vessel is registered in a foreign state, notice must also be given to the foreign state of the detention order (clause 82(6)). The authorized representative or, in the absence of an authorized representative, the owner of a vessel is responsible for all of the costs and expenses associated with its detention (clause 82(11)).

Once a detention order has been made, the vessel is prohibited from being moved (clause 82(7)) and may not be granted clearance to access or to leave a port (clause 82(8)). An enforcement officer may rescind a detention order if, in his or her opinion, it would be in the public interest to do so (clause 82(9)).

2.7.4 Violations and Administrative Monetary Penalties (Clauses 89 to 109)

Administrative monetary penalties are a non-criminal compliance tool that assigns monetary penalties to violations of legislation. As explained in clause 90(6), the purpose of the penalty is to promote compliance with the Act, rather than to punish.

Clause 90 establishes a wide range of violations and sets out corresponding penalties. Individuals, persons other than individuals and vessels can be held liable for various contraventions under the legislation. For the purposes of the bill, a person (other than an individual) includes "a partnership, an unincorporated organization, an association and a trust" (clause 2).

Establishing liability of a vessel in the commission of a violation requires only that the violation be undertaken by a person in charge of the vessel. Knowledge of who directed the commission of a violation is not required (clause 101). Any person in charge of a vessel that committed a violation who directed, authorized, assented to, acquiesced or participated in the commission of that violation is a party to and liable for that violation (clause 102(1)). Further, a person whose employee, agent or mandatary committed a violation is liable for that violation (clause 103).

Where a corporation commits a violation under the Act, any director, officer, agent or mandatary of that corporation who directed, authorized, assented to, acquiesced or participated in the commission of that violation is party to and liable for the violation (clause 102(2)).

Certain violations, such as the abandonment of a vessel or the failure to produce requested documentation, attract a maximum penalty of $50,000 in the case of an individual and $250,000 in the case of any other person or vessel (section 90(4)). For less serious violations, such as failing to properly mark a vessel or failing to follow the directions of an enforcement officer, the maximum penalty is $5,000 for an individual and $25,000 for any other person or vessel (section 90(5)).[61]

2.7.4.1 Notice of Violation and Assurance of Compliance

If the Minister of Transport or the Minister of Fisheries and Oceans has reasonable grounds to believe that a violation has been committed, he or she may issue a notice of violation or enter into an assurance of compliance, as appropriate (clause 91). An assurance of compliance is an agreement between the relevant minister and the person or vessel, whereby the minister agrees to reduce or eliminate the administrative monetary penalty in exchange for the person or vessel admitting to the violation and agreeing to measures that would improve their compliance. Factors taken into account when determining whether an assurance of compliance or a notice of violation is the appropriate response include the seriousness of the violation, compliance history and the risk of harm caused by the violation, among others.[62]

All notices of violation must be issued within two years from the day an enforcement officer becomes aware that the violation took place (clause 105). The bill requires the Minister of Transport and the Minister of Fisheries and Oceans to produce public records of notices of violation and default, including the name of the person or vessel

that committed the violation, the nature of the violation or default and the amount of the penalty (clause 107). These notices of violation must be removed from the public record on the fifth anniversary of the day on which the person or vessel has paid every penalty owing, unless it is not in the public interest to do so (clause 108(1)).

In enforcing the Act, the Minister of Transport or the Minister of Fisheries and Oceans may choose to issue a notice of violation or refer an offence for prosecution, but he or she may not do both (clause 90(7)). With the exception of the intentional sinking of a vessel (clause 34(1)), proof that a person acted with due diligence is a defence with respect to violations (clause 90(9)).

2.7.5 Offences and Punishment (Clauses 110 to 120)

The bill establishes a number of offences and corresponding punishments. The regime for offences mirrors the one used for violations;[63] however, the maximum penalties are much higher, with many including minimum fines and possible prison terms.

Punishments include fines ranging from a minimum of $5,000 for an individual up to a maximum of $6 million for persons other than individuals and vessels, and prison terms of up to three years. The bill provides that certain offences can be pursued only by way of summary proceedings, while others can be prosecuted either by way of summary proceedings or by indictment.[64] Moreover, some offences can be committed by individuals, some by vessels and some by either individuals or vessels. For the purposes of the prosecution of a vessel, it is sufficient that a person having charge of the vessel committed the offence for the vessel to be held liable (clause 115).

2.7.5.1 Offences Pursued Either by Way of Summary Conviction or by Way of Indictment

The bill establishes a number of offences that can be prosecuted either by way of summary conviction or indictment. On conviction by indictment, offences committed by an individual are punishable by a fine of not less than $15,000 and not more than $1 million, or up to three years' imprisonment, or both (clause 110(4)(a)). On summary conviction, an individual is liable to pay a fine of not less than $5,000 and not more than $300,000, or a term of imprisonment of up to six months, or both (clause 110(4)(b)).

When committed by a vessel or person that is not an individual, these offences are liable on conviction by indictment to a fine of not less than $500,000 and not more than $6 million, or on summary conviction to a fine of not less than $100,000 and not more than $4 million (clause 110(6)).

Examples of offences that can be prosecuted either by way of summary conviction or indictment include:

- leaving a dilapidated vessel stranded, grounded, anchored or moored for a period of at least 60 consecutive days, or another prescribed period of time (clause 30(1));
- abandoning a vessel (clause 32(1));
- knowingly causing a vessel to sink, partially sink or to become stranded or grounded, including on the shore (clause 34(1)); and
- failing to follow a direction to properly mark or remove a wreck (clause 21(1)).

2.7.5.2 Offences Pursued by Way of Summary Conviction

The bill also establishes offences that can be prosecuted only by way of summary conviction. Save certain offences related to insurance certificates, an individual convicted of these offences is liable to a fine of not less than $5,000 and not more than $300,000, or to a term of imprisonment of not more than six months, or to both (clause 110(5)). A vessel or a person other than an individual is liable on summary conviction to a fine of not less than $100,000 and not more than $4 million (clause 110(7)). Examples of offences that can be prosecuted only by way of summary conviction include the following:

- failure of a vessel or its crew that are subject to the Convention to report a wreck to a designated marine communications and traffic services officer, or other designated person (clause 19(1));
- failure of a vessel or its crew that are subject to the Convention to mark a wreck, in conformity with the internationally accepted system of buoyage in use, in the area where the wreck is located (clause 20);
- failure to secure a vessel adrift for a period of 48 hours or more without taking measures to secure it (clause 31);
- allowing a vessel to become a wreck by reason of failing to maintain it (clause 33);
- moving a vessel that is subject to a detention order (clause 82(7)); and
- failing to follow a direction.

Clause 110(3) sets out separate punishments for offences relating to insurance certificates. As mentioned in section 2.3.4.1 of this Legislative Summary, Bill C-64 requires vessels of 300 gross tonnage and above to carry an insurance certificate in specific circumstances (clause 24(1)). This certificate must be carried on board and produced upon request (clause 24(2)). Towed vessels can be exempt from this requirement, although the towing vessel must be able to produce proof of the exemption (clause 26(2)). Any breach of these requirements is an offence (clauses 110(1) and 110(2)) and, upon summary conviction, a person or a vessel is liable to a maximum fine of $100,000 (clause 110(3)).

2.7.5.3 General Measures Relating to Offences

In addition to other methods of punishment identified above, the Minister of Transport or the Chief Registrar of the Canadian Register of Vessels may, under clause 12 of

the bill, suspend, cancel or refuse to issue any document, including a certificate, licence or permit, issued under the CSA 2001, in the event that a person or vessel fails

- to follow directions given pursuant to the Act;
- to pay a fine or penalty imposed under the Act; or
- to reimburse the Minister of Transport or the Minister of Fisheries and Oceans for any costs and expenses incurred in fulfilling the minister's mandate under the Act.

While many offences carry a minimum fine, if this fine were to create financial hardship or would be grossly disproportionate to the nature and gravity of the offence, a court may impose a fine that is less than the minimum amount provided (clause 111).

If a corporation is prosecuted for an offence, proof that any director, officer, agent or mandatary of the corporation directed, authorized, assented to, acquiesced in or participated in the commission of the offence also makes that person guilty of the offence and liable to prosecution (clause 116(2)). Similarly, if an employee, agent or mandatary of a corporation commits an offence, the corporation is also liable for the offence (clause 117).

The defence of due diligence is available to a person (clause 119(1)) or vessel (clause 119(2)), except for the offences of knowingly causing a vessel to sink, to be stranded or grounded; concealing or disguising a wreck; interfering with the taking of a sample or the service of a notice of a detention order; or knowingly giving false or misleading information.

Proceedings by way of summary conviction must be commenced within two years of an enforcement officer becoming aware of the offence (clause 120(1)). There is no limitation period for proceedings by way of indictment.

2.8 Part 6: General Provisions (Clauses 126 to 129)

Part 6 contains general provisions relating primarily to liability and immunity.

The bill provides immunity from personal liability for any employee working for the Minister of Transport or the Minister of Fisheries and Oceans ("a servant of the Crown"); a receiver of wreck or persons authorized by him or her; designated enforcement officers (clause 127(1)); and any persons accompanying departmental officials or enforcement officers (clause 128(2)). Additionally, any person that provides assistance or advice or is otherwise directed by the Minister of Transport, the Minister of Fisheries and Oceans or an enforcement officer to do something is similarly relieved from civil and criminal liability for their actions, provided they acted reasonably and in good faith (clause 128(1)).

Should the Minister of Transport or the Minister of Fisheries and Oceans take action with respect to the locating, marking, removal or sale of a wreck, hazard or dilapidated vessel, or the use of property for these purposes, the expenses incurred

constitute a debt due to Her Majesty in right of Canada and may be recovered from the owner of the vessel (clause 129(1)).

2.9 Part 7: Regulations (Clauses 130 and 131)

Clause 130 provides the Governor in Council, on the recommendation of the Minister of Transport, with the authority to make regulations on a broad range of topics, such as insurance requirements; fees payable requirements; the detention of vessels; requirements regarding the dismantling or destruction of vessels in Canada; and the nature and extent of directions and notices issued under the Act, among others.

Of particular note, clause 130(1)(h)(i) provides authority to make regulations with respect to insurance requirements for vessels of less than 300 gross tonnage. Only 3% of the ships in Canada's registered fleet are above 300 gross tonnage and therefore subject to the compulsory insurance requirement. However, the costs to remediate hazards caused by large vessels that do not weigh 300 gross tonnage could be significant. This authority will allow the government to make regulations extending financial requirements to vessels under 300 gross tonnage should future experience with the Convention demonstrate problems with such vessels not having the insurance or financial securities necessary to meet their obligations for wreck removal or remediation.[65]

Clause 131 allows the Minister of Transport and the Minister responsible for the Parks Canada Agency to make regulations with respect to wrecks or classes of wrecks having heritage value. The ministers may regulate how these wrecks are salvaged and how they should be protected; authorize and designate enforcement officers; and establish fee and cost structures to allow for the administration of heritage wrecks.

2.10 Part 8: Transitional Provision and Related and Consequential Amendments (Clauses 132 to 152)

Part 8 contains a variety of transitional and consequential amendments to address the interplay between Bill C-64 and other statutes, including the CSA 2001, the *Customs Act*, the NPA and the *Oceans Act*, among others.

2.11 Parts 9 and 10: Review and Coming into Force (Clauses 153 and 154)

Clause 153 requires that the Act be referred to a committee of either the House of Commons or the Senate or of both for study following the fifth anniversary of the coming into force of section 4 of the Act.

Clause 154 provides that the provisions of the bill, other than clauses 38, 138 and 139, will come into force on a day fixed by the Governor in Council.

Clauses 38, 138 and 139 relate to the process by which the Minister of Transport authorizes a person to take possession of any vessel or thing that is wrecked, sunk, partially sunk, stranded, grounded, including on the shore, or abandoned in Canadian waters. These provisions will come into force separately on a day fixed by order of the Governor in Council.

NOTES

1. Bill C-64, An Act respecting wrecks, abandoned, dilapidated or hazardous vessels and salvage operations, (short title: The Wrecked, Abandoned, or Hazardous Vessels Act), 1st Session, 42nd Parliament.
2. Aldo Chircop et al., eds., *Canadian Maritime Law*, 2nd ed., Irwin Law, 2016, p. 818.
3. Transport Canada, *Proposed Canadian Legislative Regime for the Remediation of Hazards Related to Shipwrecks*, Discussion Paper, June 2015, p. 2.
4. Ibid., p. 4.
5. *Canada Shipping Act, 2001*, S.C. 2001, c. 26.
6. *Navigation Protection Act*, R.S.C. 1985, c. N-22.
7. Transport Canada (2015), p. 2.
8. Ibid.
9. Transport Canada, "Speaking Notes for The Honourable Marc Garneau, Minister of Transport for a News Conference on *Bill C-64, The Wrecked, Abandoned, or Hazardous Vessels Act*," Speech, 30 October 2017.
10. Transport Canada, "National Strategy to address Canada's wrecked and abandoned vessels," Backgrounder; and Transport Canada (2017). See also Transport Canada, *Canada's Oceans Protection Plan*.
11. The text of the *Nairobi International Convention on the Removal of Wrecks, 2007* [Convention] can be found in Schedule 1 of Bill C-64.
12. International Maritime Organization [IMO], *Wreck-removal convention to enter into force*, News release, 15 April 2014.
13. United Nations, *United Nations Convention on the Law of the Sea*, art. 57, p. 44.
14. Ibid., art. 3, p. 27.
15. IMO, *Status of Treaties*.
16. Transport Canada (2015), p. 17.
17. A "maritime casualty" means an event, or a sequence of events, that results in certain outcomes in connection with the operations of a ship (e.g., death and serious injury, the loss of a person or the loss of a vessel, material damage, etc.). An intentional act or omission with intent to cause harm is excluded from this definition. See IMO, *Resolution MSC.255(84): Adoption of the Code of the International Standards And Recommended Practices for a Safety Investigation* (adopted 16 May 2008), para. 2.9.
18. See, for example, Gotthard Gauci, "The International Convention on the Removal of Wrecks 2007 – a flawed instrument?," *Journal of Business Law*, No. 2, 2009, p. 216.
19. Jhonnie M. Kern, "Wreck Removal and the Nairobi Convention – a Movement Toward a Unified Framework?," *Frontiers in Marine Science*, 25 February 2016.
20. *Marine Liability Act*, S.C. 2001, c. 6.

21. Transport Canada (2015), p. 5.
22. Kern (2016).
23. Transport Canada (2015), p. 8.
24. Gauci (2009), p. 217.
25. Gross tonnage is a measurement of the internal volume of a vessel. According to the *International Convention on Tonnage Measurement of Ships*, gross tonnage is "a function of the moulded volume of all enclosed spaces of the ship." See IMO, "International Convention on Tonnage Measurement of Ships," Backgrounder, 23 June 1969 (in force as of 18 July 1982).
26. Article 34 of the *Vienna Convention on the Law of Treaties* states that a treaty cannot create rights or obligations for a third state without that state's recognition. See United Nations, *Vienna Convention on the Law of Treaties*, 1969, p.13.
27. Note that the Convention does not appear to prevent vessels from exercising their right of free passage in another state's Exclusive Economic Zone [EEZ] or the right of innocent passage through a state's territorial sea without insurance.
28. Ling Zhu, "Probing Compulsory Insurance for Maritime Liability," *Journal of Maritime Law and Commerce*, Vol. 45, No. 1, 2014, p. 73.
29. Ibid., p. 74.
30. Kern (2016). See also Gauci (2009), p. 212.
31. IMO, *Consideration of a Draft Convention on the Removal of Wrecks: Proposal to extend the scope of the draft convention*, LEG/CONF.16/12, May 2007.
32. Kern (2016).
33. Ibid.
34. Gauci (2009), p. 217.
35. See, for example, ibid., p. 223.
36. Clause 130(1)(c), which provides that the Governor in Council may make regulations extending the application of the Convention to vessels excluded from the application of the Convention.
37. The definition of "wreck" contained in the Convention is as follows:

    (a) a sunken or stranded ship; or

    (b) any part of a sunken or stranded ship, including any object that is or has been on board such a ship; or

    (c) any object that is lost at sea from a ship and that is stranded, sunken or adrift at sea; or

    (d) a ship that is about, or may reasonably be expected, to sink or to strand, where effective measures to assist the ship or any property in danger are not already being taken.

38. John Currie, *Public International Law*, Irwin Law, 2001, p. 205.
39. Ibid.
40. Transport Canada (2015), p. 3.
41. The Convention defines "hazard" as any condition or threat that

    (a) poses a danger or impediment to navigation; or

(b) may reasonably be expected to result in major harmful consequences to the marine environment, or damage to the coastline or related interests of one or more States.

42. Transport Canada (2015), p. 9.

43. Ibid., p. 8.

44. Kern (2016).

45. This requirement has been described as "controversial" insofar as States Parties are required to impose the Nairobi Convention's requirements on all ships as a condition of port entry, including those of non–State Parties. See Kern (2016).

46. Transport Canada (2015), p. 11.

47. Ibid.

48. Ibid.

49. "Wreck" is defined in Part 2 of the legislation as

(a) a vessel, or part of a vessel, that is sunk, partially sunk, adrift, stranded or grounded, including on the shore; or

(b) equipment, stores, cargo or any other thing that is or was on board a vessel and that is sunk, partially sunk, adrift, stranded or grounded, including on the shore.

50. Part 2 of the bill defines "dilapidated vessel" as means a vessel that meets any prescribed criteria and is significantly degraded or dismantled, or is incapable of being used for safe navigation.

51. Transport Canada (2015), p. 6. For the purposes of Part 2, the term "hazard" means

> any condition or threat that may reasonably be expected to result in harmful consequences to the environment, coastlines, shorelines, infrastructure or any other interest, including the health, safety, well-being and economic interests of the public.

The definition of "hazard" in Part 2 is closely aligned with the definition in the Convention, which applies to Part 1. However, the definition in Part 2 creates a slightly lower threshold for triggering action by contemplating "harmful consequences" rather than "major harmful consequences."

52. Transport Canada (2017).

53. See *Fishing and Recreational Harbours Act*, R.S.C. 1985, c. F-24, s. 2.

54. Chircop et al., eds. (2016), p. 780.

55. Ibid.

56. The text of the *International Convention on Salvage, 1989*, can be found in Part 1 of Schedule 2 of Bill C-64.

57. For the purposes of Part 4, the term "wreck" includes the following:

(a) jetsam, flotsam, lagan and derelict and any other thing that was part of or was on a vessel wrecked, stranded or in distress; and

(b) aircraft wrecked in waters and anything that was part of or was on an aircraft wrecked, stranded or in distress in waters.

58. Chircop et al., eds. (2016), p. 815.

59. Ibid.

60. See *Department of Transport Act*, R.S.C. 1985, c. T-18, ss. 7–8; *Navigation Protection Act*, s. 3; and *Department of Fisheries and Oceans Act*, R.S.C. 1985, c. F-15, s. 4.

61. Clause 109 authorizes the Governor in Council (i.e., Cabinet) to designate the contravention of any provision or direction given within the Act and its associated regulations as a violation. Moreover, it empowers the Governor in Council to provide greater specificity as to the administrative monetary penalties program by determining a penalty or range of penalties for particular violations, subject to the maximums identified at clauses 90(4) and 90(5) of the bill. Clauses 109(d) and 109(e) provide that the Governor in Council may establish criteria for mitigating penalties and persons who can request a review of the alleged violation.

62. For a definition of an "assurance of compliance," see Transport Canada, *Policy on Compliance and Enforcement of the Canada Shipping Act, 2001*, paras. 5.8–5.8.2.

63. Although "violation" and "offence" are synonymous with a contravention of the law, the term "violation" is used in the context of an administrative monetary penalty, a form of civil penalty, whereas the term "offence" is used for a criminal penalty.

64. Criminal offences in Canada are categorized as either summary conviction offences, indictable offences, or hybrid offences, where a prosecutor may choose between the two. Summary conviction offences are generally less serious than indictable offences and the procedure by which a person is prosecuted is simplified somewhat under the summary conviction offence procedure. See Department of Justice, *Criminal offences*.

65. Transport Canada (2015), p. 14.